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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,147	12/08/2003	Nicholas F. D'Antonio	DA0589US (#90036)	2308
28672	7590	11/10/2005		
D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			EXAMINER MAUST, TIMOTHY LEWIS	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/730,147	Applicant(s) D'ANTONIO ET AL.	
	Examiner Timothy L. Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 21-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15 is/are rejected.
- 7) ☒ Claim(s) 13,14 and 16-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 1-20 in Group I, claims 21-37, 45-51 and 53-55 in Group II was set forth in the reply filed on 9/12/05 is acknowledged. The traversal is on the ground(s) that the amendment places the claims in the same class/subclass. This is not found persuasive because the subcombinations are deemed to be separately usable as indicated in the restriction.

The requirement is still deemed proper and is therefore made FINAL.

Claims 21-37, 45-51 and 53-55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Swift et al. (4,697,622).

In regard to claim 1, the Swift et al. reference discloses a “filling apparatus” (Fig. 5) comprising a “housing” 92 and a “septum opening device” (129 and 140), as claimed.

In regard to claim 2, see “metering station” 10 in Figure 1.

In regard to claim 3, see "valve" 148 in Figure 5.

In regard to claim 4, see "conduits" 126 and 134.

In regard to claim 6, see "container support" 98 in Figure 5.

Claims 1-3, 5, 6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearson. (4,432,755).

In regard to claims 1, 6 and 10, the Pearson reference discloses a "filling apparatus" (Refer to Fig. 13) comprising a "housing" 76, "openable cover" 84 and a "septum opening device" (164, 166 and 168), as claimed.

In regard to claims 2, 5 and 9, see "metering station" 158 (Column 14, lines 13-17).

In regard to claim 3, see "valves" 170 and 172.

Claims 1-12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Haber et al. (5,329,976).

In regard to claims 1, 6, 10 and 15, the Haber reference discloses a "filling apparatus" (Refer to Fig. 3) comprising a "housing" 24, a "container holder portion" 14, an "openable cover" (unlabeled; defined by a septum of vial 4) and a "septum opening device" (54 and 56), as claimed.

In regard to claims 2, 5 and 9, see "metering station" 76.

In regard to claims 3 and 7, see "valve" 68.

In regard to claim 4, see "air conduit" 56 and "fluid conduit" 54 in Figure 3.

In regard to claim 5, see column 6, lines 17-33.

In regard to claim 8, a "one-way valve" is represented in Figure 13.

In regard to claims 9 and 11, Figures 4 and 5 disclose the compression of wall 34 with respect to wall 30 and biasing "spring" 42.

In regard to claim 12, see "channel walls" 104 and 106 in Figure 6.


Allowable Subject Matter

Claims 13, 14 and 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Tue. - Thur. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust
Primary Examiner
Art Unit 3751

Tlm
11/3/05